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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-A-R-M-

DATE: JAN. 4, 2016

APPEAL OF EL PASO FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. Section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The Field Office Director, El Paso, Texas, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born on [redacted] The Applicant was admitted to the United States as a lawful permanent resident on June 20, 2013. The Applicant's father was issued a Certificate of Citizenship on April 24, 2014.[1] The Applicant's mother is a native and citizen of Mexico. The Applicant's parents were never married.

On March 5, 2015, the Director denied the Form N-600, finding that the Applicant did not acquire U.S. citizenship because he was born out-of-wedlock and did not submit sufficient evidence that he is the biological child of his father.

On appeal, the Applicant maintains that the Director erred in denying his citizenship claim because he need not provide DNA evidence of his biological relationship to his father, as he was legitimated by his father under Texas law.[2]

Because the Applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of each case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (BIA 1989)).

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[1] The Certificate of Citizenship reflects that the Applicant's father acquired U.S. citizenship at the time of his birth, on [redacted]

[2] The Form I-290B, Notice of Appeal or Motion, was filed by [redacted] However, the Form I-290B, Notice of Appeal or Motion, was not accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the appeal. On May 6, 2015, we sent a request for a new Form G-28 for the appeal to counsel by facsimile. To date, counsel has not responded to our request. Accordingly, a copy of this decision will only be provided to the Applicant.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). To determine whether the Applicant derived citizenship from his father, we apply "the law in effect when [he] fulfilled the last requirement for derivative citizenship." *Ashton v. Gonzales,* 431 F.3d 95, 97 (2d Cir. 2005) (citing *Rodriguez–Tejedor,* 23 I&N Dec. 153, 163 (BIA 2001)). In this case, the Applicant was born in in Chihuahua, Mexico, and he began residing in the United States in 2013. Section 320 of the Act, as amended by the CCA, is therefore applicable to his case.

Section 320 of the Act provides, in pertinent part, that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
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> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
> (2) The child is under the age of eighteen years.
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1.

> For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of . . . a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

Id. Further, for naturalization and citizenship purposes, the term "child" means:

> an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere. . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . . .

Section 101(c) of the Act, 8 U.S.C. § 1101(c)(1).

The record reflects that the Applicant was admitted to the United States as a lawful permanent resident prior to the date on which he turned 18 years old. However, the record contains insufficient evidence to establish that the Applicant was legitimated by his father prior to that date, or that he meets the definition of a child under section 101(c) of the Act.

Here, the Applicant has not asserted or established that he has been legitimated under the laws of Chihuahua, Mexico. According to a June 2012 Library of Congress report for the Executive Office of Immigration Review, LL File No. 2012-008081, the Civil Code of Chihuahua, enacted in 1974, provides that all children born out of wedlock may be legitimated, in accordance with articles 331-336 of the code, as long as the parents subsequently marry and expressly acknowledge the children as theirs. The report indicates that, separate from legitimation, filiation of a child by a father born out of wedlock can be established by voluntary acknowledgment or by a judgment that declares paternity. Parentage is established with respect to the father by voluntary acknowledgment, taking place: 1) in the birth certificate, before the civil registry official; 2) in a special certificate before the civil registry official; 3) by a notarized document; 4) by a will; or 5) by direct and express judicial confession. Upon acknowledgement of a child born out of wedlock, the child gains certain rights, including the right to: 1) take the last name of the acknowledging parent(s); 2) get support from the acknowledging parent(s); and 3) get an inheritance share and support as provided by law.

The distinction made between legitimation and filiation in the Civil Code of Chihuahua indicates that the two terms are not identical. As such, even if the Applicant's father established his parentage in accordance with the laws of Chihuahua, the Applicant is unable to demonstrate legitimation under these laws, as his parents never married one another.

The Applicant asserts that he was legitimated under the law of Texas, where he and his father currently reside. Under the Texas Family Code, a man may voluntarily acknowledge paternity of a child born out of wedlock through an Acknowledgement of Paternity (AOP), which must be signed by both parents of the child and filed with the Vital Statistics Unit (VSU). Texas Family Code §§160.301-160.305. While the record contains an AOP signed by the Applicant's parents on October 23, 2014, the record does not reflect that the AOP was filed with the VSU or indicate the date of such filing. Only upon the filing of an AOP with the VSU does the biological father become the legal father. Texas Family Code § 160.304(c). Accordingly, the Applicant has not submitted sufficient evidence to establish that he was legitimated in Texas under the requirements of the Texas Family Code prior to his eighteenth birthday.

Texas Family Code § 160.202, effective June 14, 2001, states that a child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other. The Board of Immigration Appeals (the Board) recently issued a precedent decision which holds that a person born out of wedlock may qualify as a legitimated "child" of his or her biological parents under section 101(c)(1) of the Act for purposes of citizenship if he or she was born in a country or State that has eliminated all legal distinctions between children based on the marital status of their parents or had a residence or domicile in such a country or State (including a State within the United States), if otherwise eligible. See *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015). The Applicant in this case, though, still does not meet the definition of his father's child under section 101(c) of the Act. That section requires the legitimation to take place before the child turns 16 years of age, and the Applicant turned 16 years of age on May 8, 1989. However, the effective date of the Texas law change, June 14, 2001, occurred after the Applicant's 16th birthday. Furthermore, as previously noted, the Applicant has not established that an AOP was filed with the

VSU and, therefore, his father has not voluntarily acknowledged paternity in accordance with Texas law.

The Applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the Applicant has not met this burden. Accordingly, the Applicant is not eligible for a certificate of citizenship under section 320 of the Act, and the appeal will be dismissed. This dismissal is without prejudice to the future filing of a Form N-400, Application for Naturalization.

ORDER: The appeal is dismissed.

Cite as *Matter of K-A-R-M-*, ID# 14141 (AAO Jan. 4, 2016)